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No. 92-1977

In The

Supreme Court of the United States

October Term, 1993

HOWARD W. FISCH, JR., individually and on behalf of all Co-Defendants and Co-Tenants,

Petitioner,

vs.

RANDALL MILL CORPORATION,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Georgia

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The sole issue presented for review is whether the Georgia mineral interests lapse statute is so vague and indefinite as to be void under the Constitutions of the United States and Georgia where the statute at issue has been construed by the Georgia Supreme Court.

PARTIES TO THE PROCEEDING

Petitioner Howard W. Fisch, Jr.'s statement regarding the parties in this case is essentially correct. Additionally, pursuant to Rule 24(b) of the Rules of the United States Supreme Court, Respondent Randall Mill Corporation ("Randall Mill") states that only Howard W. Fisch, Jr. ("Fisch") filed a Notice of Appeal in the Georgia Supreme Court.

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

STATEMENT OF THE CASE 1

A. Proceedings and Dispositions Below 1

B. Factual Allegations 3

REASONS FOR DENYING THE WRIT 3

I. THE STATUTE IS NOT UNCONSTITUTIONALLY VAGUE AND INDEFINITE 4

II. THIS CASE DOES NOT PRESENT A QUESTION OF FEDERAL LAW WHICH CONFLICTS WITH A DECISION OF EITHER ANOTHER STATE COURT OR OF A UNITED STATES COURT OF APPEALS 9

III. THIS CASE DOES NOT PRESENT A QUESTION OF FEDERAL LAW WHICH SHOULD BE SETTLED BY THIS COURT 10

IV. FISCH FAILED TO RAISE THE ISSUE OF UNCONSTITUTIONAL TAKING OF PROPERTY IN THE LAST COURT PRIOR TO SUPREME COURT REVIEW 13

CONCLUSION 14

TABLE OF AUTHORITIES

Page

CASES:

Anderson v. Little & Davenport Funeral Home, Inc., 251 S.E.2d 250 (1978) 8

Bishop v. Wood, 426 U.S. 341 (1976) 11

Cole v. Ralph, 252 U.S. 286 (1920) 6

Cotton States Mut. Auto Ins. Co. v. Bates, 749 F.2d 663 (1984) 8

Fremont Lumber Co. v. Starrell Petroleum Co., 364 P.2d 773 (Or. 1961) 6

Georgia Marble Company v. Whitlock, 392 S.E.2d 881 (1990) 10

Grayned v. City of Rockford, 408 U.S. 104 (1972) 4

Hayes v. Howell, 308 S.E.2d 170 (1983) ..... *passim*

High Ol' Times, Inc. v. Busbee, 673 F.2d 1225 (11th Cir. 1982) 6, 7

Larkin v. Laster, 334 S.E.2d 158 (1985) 12

Minnesota ex rel. Pearson v. Probate Court of Ramsey County, 309 U.S. 270 (1940) 7

Mixon v. One Newco, Inc., 863 F.2d 846 (11th Cir. 1989) 4, 13

Railroad Commission of Texas v. Pullman Co., 312 U.S. 496 (1941) 11

Scoggins v. Moore, 579 F. Supp. 1320 (1984), *aff'd without opinion* 747 F.2d 1466 (11th Cir. 1984) 11

Smiley v. Kansas, 196 U.S. 447 (1905) 11

State Farm Mut. Auto Ins. Co. v. Bates, 542 F. Supp. 807 (N.D. Ga. 1982) 8

TABLE OF AUTHORITIES – Continued

Page

Texaco v. Short, 454 U.S. 516 (1982) 9, 10

Taylor v. Freeland & Kronz, 112 S.Ct. 1644 (1992) 14

United States v. Thirty-Seven Photographs, 402 U.S. 363 (1971) 7

Youakim v. Miller, 425 U.S. 231 (1976) (*per curiam*) 14

STATUTES:

Official Code of Georgia, Anno. § 9-11-56 3

Official Code of Georgia, Anno. § 44-5-168 ..... *passim*

Indiana Code Anno. § 32-5-11-1 12

Louisiana Revised Statutes Anno. § 31-21 11

Michigan Statutes Anno. § 554.291 12

Nebraska Revised Statutes § 57-227 12

North Dakota Cent. Code § 38-18-1-02 12

South Dakota Codified Laws Anno. § 43-30A-3 12

Wisconsin Statutes Anno. § 706.057 12

OTHER:

Georgia Constitution Art. III, Sec. VI, par. II(a)(i) 11

Supreme Court Rule 10.1 3

Supreme Court Rule 14.1(h) 14

Supreme Court Rule 24 ii

54 Am.Jur.2d *Mines and Minerals*, § 5 (1971) 6

For the reasons set forth herein, Randall Mill urges the Court to deny the Petition for Writ of Certiorari.

OPINIONS BELOW

The unanimous opinion of the Georgia Supreme Court is reported at 262 Ga. 861, 426 S.E.2d 883 (1993), and appears as Appendix A to the Petition for Writ of Certiorari. The Order of the Superior Court of Fulton County, Georgia, denying Fisch's Motion for Summary Judgment and granting Randall Mills' Motion for Summary Judgment, respectively dated January 28, 1991, appears as Appendix B to the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

A. Proceedings and Disposition Below.

In October, 1989, Randall Mill purchased certain real property (the "Property"), known as Land Lots 179 and 180 in the City of Atlanta, Fulton County, Georgia. Shortly thereafter, Randall Mill brought an action pursuant to O.C.G.A. § 44-5-168 to extinguish any adverse claims to mineral rights (the "Mineral Rights") in the Property. (O.C.G.A. § 44-5-168 appears as *Appendix A* hereto) In two proceedings below, Fisch has claimed that he held an interest in the Mineral Rights and that those purported rights have not been defeated, as a matter of law, by Randall Mill. Based upon O.C.G.A. § 44-5-168(a), *inter alia*, the Superior Court of Fulton County, Georgia

(the "Trial Court") held that Randall Mill was entitled to judgment as a matter of law and thus holds absolute fee simple title to the Property.

On appeal, the Georgia Supreme Court unanimously affirmed the Trial Court's decision. The Georgia Supreme Court correctly determined that Fisch had no claim to the Mineral Rights because Fisch did not, as a matter of law, "work or attempt to work the mineral rights" within the meaning of O.C.G.A. § 44-5-168(a). The Georgia Supreme Court concluded that

> Fisch's acts do not constitute, as a matter of law, working or attempting to work his mineral rights. Fisch contends that he has worked his mineral interests by selling his mineral rights in one lot, regularly visiting the property, collecting rock samples for testing, obtaining assay reports of minerals indigenous to the area, studying geological maps, and attempting to locate other heirs. Adopting his interpretation of work as "any physical or mental exertion" would undermine the statute's purpose because any effort, however unrelated to the exploration and production of minerals, would constitute working the mineral rights. *The owner of a mineral interest must do more than conduct genealogical research and pick up rock samples to meet the statutory requirement of working or attempting to work mineral rights.*

Fisch, 262 Ga. 861, 862-863, 426 S.E.2d 883, 885. (emphasis added).

Additionally, the Georgia Supreme Court considered and expressly rejected Fisch's contention that O.C.G.A.

§ 44-5-168(a) is vague and indefinite and therefore violates the due process clause of the United States and Georgia Constitutions.

B. Factual Allegations.

This case was originally decided in the Superior Court of Fulton County, Georgia on cross motions for summary judgment filed by Randall Mill and Fisch pursuant to O.C.G.A. § 9-11-56. There are no factual issues in dispute. Randall Mill refers this Court to the Georgia Supreme Court's opinion in this case which contains a succinct statement of the facts.

REASONS FOR DENYING THE WRIT

Fisch has failed to demonstrate that O.C.G.A. § 44-5-168(a) (the "Statute") is unconstitutionally vague and indefinite. Assuming, for the sake of argument, that the Statute was vague and indefinite, such is no longer the case because the Georgia Supreme Court has cured any vagueness alleged by Fisch by interpreting the Statute. In addition, Fisch has failed to present any "special or important reasons" for the grant of certiorari and has failed to invoke any of the criteria specified in Supreme Court Rule 10.1: No "state court of last resort has decided a federal question in a way that conflicts with a decision of another state court of last resort or of a United States Court of Appeals"; and no "state court or United States Court of Appeals has decided an important question of federal law which has not been, but should be settled by this Court."

I. THE STATUTE IS NOT UNCONSTITUTIONALLY VAGUE AND INDEFINITE

The cardinal rule in interpreting the meaning of a word contained in a statute is to (i) ascertain the legislative intent and purpose behind the statute and (ii) give to it an interpretation which will effectuate the legislative intent. *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 2298, 33 L.Ed. 2d 222 (1972). The undisputed policy and intent behind the enactment of the Statute by the Georgia General Assembly is to encourage the *use* of mineral rights. *Hayes v. Howell*, 251 Ga. 580, 585, 308 S.E.2d 170, 176 (1983) (holding lapse statute valid condition to retention of mineral rights based on state's police power). In order to carry out this intent, "work", as contemplated by the Georgia General Assembly, has been held to mean affirmative acts on the part of the mineral rights claimant. *Mixon v. One Newco, Inc.*, 863 F.2d 846, 849 (11th Cir. 1989) (distinguishing lapse statute from traditional adverse possession statute).

Randall Mill denied that Fisch has, or has ever had, any title to the Mineral Rights. Thus the Trial Court could not have entered judgment in favor of Fisch on his Motion for Summary Judgment. However, assuming for the sake of argument that there was or has been a severance of some or all of the mineral rights from the Property, and that Fisch had title, in some amount, to the Mineral Rights, the Trial Court was correct in finding that Fisch had not "work[ed] or attempt[ed] to work his purported mineral rights" under Georgia law.

The Statute provides that mineral rights lapse if the claimant has "neither worked nor attempted to work the

mineral rights nor paid any taxes due on them for a period of seven years since the date of the conveyance and for seven (7) years immediately preceding the filing of the Petition as provided in subsection (b) of the Code Section." O.C.G.A. § 44-5-168(a). Thus, the sole issue presented by the Petition for Writ of Certiorari is the application of the statutory phrase "work or attempt to work one's mineral rights" and whether persons of reasonable intelligence can ascertain the core meaning of that phrase.

The best and only definition of "work" in the context of the Statute is clearly to "cause to operate or produce". This definition was properly applied by both the Trial Court and the Georgia Supreme Court and is consistent with common usage.[1] Such a definition of "work" is the only one which is consistent with the legislative intent underlying the Statute of encouraging the *use* of mineral rights. Even the common usage of the word "work"

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[1] "Work", a transitive verb, is defined in its common usages as follows:
1: To bring to pass: EFFECT (work havoc) (work miracles) . . . **2A**: to fashion or create by expending labor or exertion upon: FORGE, SHAPE (work flint into tools); **B**: to make or decorate with needle work; **ESP**: EMBROIDER (the button holes of the dress were worked in contrasting color) (work a floral design in wool and silk on the shawl); **3A**: to prepare for use by stirring or kneading; **B**: to bring into a desired form by a gradual process of cutting, hammering, scraping, pressing, stretching (work cold steel); **4**: to set or keep in motion, operation or activity (work cattle in a roundup); **5**: cause to operate or produce (a pump worked by hand) (***work a quarry***) (work farmland). *Webster's Third New International Dictionary* (1981). (emphasis added)

would require a mineral rights claimant either to operate or produce minerals to prohibit his mineral rights from lapsing.

The only conceivable manner in which one can operate or produce minerals is to conduct actual mining activities. Simply put, "worked or attempted to work" means "use". Given the requirements that a mineral rights owner must exhibit affirmative acts and use his mineral rights, the Georgia General Assembly, in promulgating the Statute, intended that mining activities must be conducted to preserve these rights. The term "mining" has been uniformly defined as "an operation consisting of sinking shafts to the productive level, digging or blasting out the minerals, and elevating them to the surface for processing . . . " 54 Am.Jur.2d *Mines and Minerals*, § 5 (1971); *Cole v. Ralph*, 252 U.S. 286, 40 S.Ct 321, 64 L.Ed. 567 (1920) ("mining claim is to do something toward making it productive, such as developing or extracting an ore body after it has been discovered"); *See also, e.g., Fremont Lumber Co. v. Starrell Petroleum Co.*, 228 Ore. 180, 364 P.2d 773 (1961) (analyzing lease provisions containing the term "mining" to distinguish from "prospecting").

Even if one assumes that the Statute was once vague and indefinite, such is no longer the case. A court may cure a statute's vagueness by statutory interpretation. *High Ol' Times, Inc. v. Busbee*, 673 F.2d 1225, 1229 (11th Cir. 1982) (construing the certainty and definiteness of a state statute by reference to legislative intent). The Georgia Supreme Court's interpretation of the Statute has removed any vagueness alleged by Fisch. Accordingly,

this Court must accept the Georgia Supreme Court's construction for the purpose of determining the constitutionality of the Statute. *Minnesota ex rel. Pearson v. Probate Court of Ramsey County*, 309 U.S. 270, 272, 60 S.Ct. 523, 525, 84 L.Ed. 744 (1940) (holding statute not impermissibly vague and indefinite in view of the construction placed thereon by the highest court of the state); *United States v. Thirty-Seven Photographs*, 402 U.S. 363, 369, 91 S.Ct. 1400, 1404, 28 L.Ed.2d 822 (1971) ("It is solely with the province of state courts authoritatively to construe state legislation").

Thus, Fisch seeks now to circumvent well-established rules of interpretation that were employed by the Georgia Supreme Court to determine the certainty and definiteness of the Statute. The Georgia Supreme Court has conclusively interpreted the Statute and recognized that the determining factor in applying the Statute is that "worked or attempted to work" requires that a claimant of mineral rights must *use* minerals in the land:

> The term "mineral rights" is defined as "the right to explore for and extract [specified] minerals" in a given tract of land. (cite). To meet the statutory requirement of working or attempting to work mineral rights, the owner of mineral interests must carry on an operation to explore for, use, produce, or extract minerals in the land. The statute is not so uncertain in its meaning that persons of common intelligence must guess at its interpretation and differ on its application.

Fisch, 262 Ga. 861, 862, 426 S.E.2d 883, 885.

The United States Constitution tolerates a greater degree of vagueness in civil statutes. *High Ol' Times, Inc.*

v. Busbee, 673 F.2d 1225, 1229 (11th Cir. 1982) (holding Georgia "head shop" laws not void for vagueness). When a non-penal statute is before the Court, the court "must be lenient in evaluating its constitutionality." *State Farm Mut. Auto Ins. Co. v. Bates*, 542 F. Supp. 807, 825 (N.D. Ga. 1982) (*citing*, *Exxon Corporation v. Busbee*, 644 F.2d 1030, 1033 (5th Cir. 1981), *cert. denied*, 454 U.S. 932, 102 S.Ct. 430, 70 L.Ed.2d 239 (1981)); *Anderson v. Little & Davenport Funeral Home, Inc.*, 242 Ga. 751, 752, 251 S.E.2d 250, 251 (1978) ("[a]lthough a statute does not undertake to define each of the words contained therein, this will not automatically render the statute vague, indefinite or uncertain in meaning"). Thus, a civil statute will be upheld by courts as certain and definite "if persons of reasonable intelligence can derive a core meaning from [the] statute." *Cotton States Mut. Inc. Co. v. Anderson*, 749 F.2d 663, 669 (11th Cir. 1984) (upholding the certainty and definiteness of the Georgia No-Fault Act).

There is no question but that persons of reasonable intelligence can ascertain a "core meaning" of the term "work or attempt to work" one's mineral rights by simply applying an ordinary signification to this language as is required under a vagueness analysis. The term "work or attempt to work" means the actual or attempted production of minerals through mining activity. The Statute is not void because the Georgia General Assembly did not specifically delineate what acts constitute "work or attempt to work" one's mineral rights. Likewise, Fisch's contention that *he* is uncertain as to the Statute's meaning does not render the Statute unconstitutional. *Bates*, 542 F. Supp. at 825 ("uncertainty in [a statute] is not enough for it to be unconstitutionally vague; rather, it must be

substantially incomprehensible"). Therefore, Fisch's argument that the statute is "void for vagueness" is without merit.

II. THIS CASE DOES NOT PRESENT A QUESTION OF FEDERAL LAW WHICH CONFLICTS WITH A DECISION OF EITHER ANOTHER STATE COURT OR OF A UNITED STATES COURT OF APPEALS

Fisch cannot cite any decisions that conflict with the Georgia Supreme Court's decision in *Fisch*. Instead, Fisch labors to fabricate a conflict between the precedent of this Court and the *Fisch* decision. His effort is disingenuous, at best, and unavailing. Specifically, Fisch asserts that "this Court held that a state has the power to condition permanent retention of property rights on performance of reasonable conditions that constitute minimal burdens to indicate a present intention to retain the interest." *Petition* at 12. Fisch proceeds to argue that *Fisch* conflicts with the precedent of this Court because "[c]ritical to the Court's decision in *Texaco v. Short*, 454 U.S. 516, 102 S.Ct. 781, 70 L.Ed.2d 738 (1982), was the fact that an owner could safeguard any mineral rights under the statute by the mere filing of a statement of claim in the county recorder's office at any time during a twenty-year period." *Id.*

Fisch's reliance upon *Texaco* is misplaced because Fisch ignores the obvious: this Court simply held in *Texaco* that requiring mineral rights owners to complete *any one* of the acts of use under the Indiana Mineral Lapse Statute was reasonable. Nowhere in that opinion did this Court state or infer that a mineral rights lapse statute

must provide for the filing of a notice of claim as a mechanism to preserve one's mineral rights.[2] Likewise, this Court did not state in *Texaco* that filing a notice of claim automatically preserves one's mineral rights regardless of whether the lapse statute under scrutiny lists such a filing as a mechanism by which mineral rights can be preserved. Nowhere in *Texaco* did this Court prohibit a state from requiring a claimant to work his mineral rights in order to preserve those rights.

Fisch has failed to cite a single decision rendered by this Court or any state supreme court which even hints at – let alone establishes – that mineral rights statutes must include the filing of a notice of claim as a mechanism to preserve one's mineral rights. Accordingly, Fisch's Petition for Writ of Certiorari is due to be denied.

III. THIS CASE DOES NOT PRESENT A QUESTION OF FEDERAL LAW WHICH SHOULD BE SETTLED BY THIS COURT.

The determination of whether a claimed interest in property is sufficient has long since been recognized as

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[2] The Georgia Supreme Court has already held that the mechanisms by which mineral rights can be preserved in Georgia under O.C.G.A § 44-5-168, satisfy this Court's analysis in *Texaco*. *Georgia Marble Company v. Whitlock*, 266 Ga. 350, 355, 392 S.E.2d 881, 885 (1990). The Georgia Supreme Court has also held that the Statute does not constitute an uncompensated taking of property. *Hayes v. Howell*, 251 Ga. 580, 583-85, 308 S.E.2d 170, 175-176 (1983).

the province of the several states.[3] *Scoggins v. Moore*, 579 F. Supp. 1320, 1325, *aff'd without opinion*, 747 F.2d 1466 (11th Cir. 1984) ("[t]o determine the sufficiency of a property interest, reference must be made to state law"); *Bishop v. Wood*, 426 U.S. 341, 344, 96 S.Ct. 2074, 2077, 48 L.Ed.2d 684 (1976). It is also axiomatic that this Court will not substitute its own interpretation of a state statute for that of the state's own courts. *Smiley v. Kansas*, 196 U.S. 447, 455, 25 S.Ct. 289, 290, 49 L.Ed. 546 (1905) (holding interpretation placed by the highest court of the state upon its statutes is conclusive for the United States Supreme Court); *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 499-500, 61 S.Ct. 643, 644-645, 85 L.Ed. 971 (1941) ("The last word on the meaning of a state statute belongs to the State Supreme Court.") To require all states to include the filing of a notice of claim as a method for avoiding the effect of a mineral lapse statute is to ignore the foundations of jurisprudence respecting a state's authority to regulate the mineral rights within its boundaries.

Georgia is one of eight states that has some form of lapse statute that may terminate the rights of mineral interest owners.[4] These lapse statutes uniformly require

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[3] The Georgia Constitution specifically authorizes the General Assembly "to provide [by law for; (1)] restrictions upon land use in order to protect and preserve the natural resources, environment and vital areas of this state." (emphasis supplied) 1983 Georgia Const., Art. III, Sec. VI, Par. II (a)(1) (Georgia Constitution, Art. III, Sec. VI, Par. II (a)(1) appears as *Appendix B* hereto).

[4] The other states that have enacted mineral rights lapse statutes are: Louisiana (La. Rev. Stat. Ann. § 31-21); Indiana

the mineral interest claimant to work his mineral rights during a specified period of time in order to prevent the forfeiture of those rights. If the statutory level of activity is not met by the mineral interest claimant, the rights "lapse."

The Statute was enacted to encourage the collection of taxes as well as to clear title problems which may exist with mineral interests. *Hayes v. Howell*, 251 Ga. 580, 585, 308 S.E.2d 170, 176-177; *Larkin v. Laster*, 254 Ga. 716, 718, 334 S.E.2d 158, 160 (1985) (holding that failure to pay taxes caused claimants to lose alleged mineral interests). A central purpose behind the Georgia General Assembly's enactment of the Statute is the desire to eliminate title problems resulting from long held mineral interests that have not been worked for an extended period of time. Mineral rights claimants are not only encouraged to develop their interests, but also to permit the State to collect any due and owing property taxes from the mineral rights claimant. The Georgia Supreme Court, "consistent with the evil that the General Assembly sought to remedy" construed "worked or attempted to work" to mean "use". *Fisch*, 262 Ga. 861, 862 426 S.E.2d 883, 885.

Fisch has argued that his walking tour of the Property, picking up rocks thereon and conducting genealogical research is sufficient to preserve whatever mineral rights he may have had. However, the Statute requires a mineral rights claimant to undertake *affirmative acts* to

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(Ind. Code Ann. § 32-5-11-1); Michigan (Mich. Stat. Ann. § 544.291); Nebraska (Neb. Rev. Stat. § 57-228); North Dakota (N.D. Cent. Code § 38-18-1-02); South Dakota (S.D. Codified Laws Ann. § 43-30A-3); Wisconsin (Wis. Stat. Ann. § 706.057).

work those rights in order to protect them from being lost. *Mixon*, 863 F.2d at 849. At the most, Fisch has (perhaps) prospected for minerals, but he has not "worked" any mineral rights as a matter of law.

Fisch's stroll about the Property and reflection about the possibility that minerals may be found there does not rise to the level of activity required by the Statute. The legislative intent behind the Statute is to encourage the *use* of minerals. Fisch has not met this requirement. Instead, Fisch asks this Court to rule that an afternoon stroll or a casual thought about potential minerals can preserve one's mineral rights without the necessity of mining those minerals. Fisch's interpretation of the Statute would encourage clouds on title, rather than the use of minerals. This result is contrary to the Statute's purpose and will result in unnecessary interference with a state regulatory program. Adopting Fisch's interpretation of work as "any physical or mental exertion" would undermine Georgia's intent in enacting the Statute because any effect, no matter how unrelated to the exploration and production of minerals, would constitute working or attempting to work mineral rights. Accordingly, Fisch's Petition for Writ of Certiorari must be denied.

IV. FISCH FAILED TO RAISE THE ISSUE OF UNCONSTITUTIONAL TAKING OF PROPERTY IN THE LAST COURT PRIOR TO SUPREME COURT REVIEW

Fisch states that the question presented by this case, *inter alia*, includes "[w]hether the conditions imposed on

owners of mineral rights under Georgia's mineral rights lapse statute . . . *constitute an unconstitutional taking of property.*" (emphasis added). *Petition* at i. However, Fisch did not raise this issue for review in the Georgia Supreme Court.

Accordingly, Fisch did not preserve a specific federal point for review in the last court prior to this Petition as required by Supreme Court Rule 14.1(h). The issue of whether the Statute constitutes an unconstitutional taking of property is not properly before this Court. *Taylor v. Freeland & Kronz*, 112 S.Ct. 1644, 1649 118 L.Ed.2d 280 (1992) (stating that this Court does not decide questions not raised in lower courts in order to maintain the integrety of the process of certiorari); *Youakim v. Miller*, 425 U.S. 231, 234, 96 S.Ct. 1399, 1401, 47 L.Ed.2d 701 (1976) (*per curiam*) ("Ordinarily, this Court does not decide questions not raised or resolved in the lower court.").

CONCLUSION

The Georgia Supreme Court's unanimous decision in this case comports with all decisions of this Court in the area of the question presented for review. Also, the Georgia Supreme Court has conclusively interpreted the

Statute. Therefore, Fisch has failed to advance any reason for the grant of certiorari. His Petition should be DENIED.

This 15th day of July, 1993.

Respectfully submitted,

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APPENDIX A

44-5-168. Adverse possession of mineral rights under certain conditions; procedure to obtain title.

(a) Whenever mineral rights are conveyed or whenever real property is conveyed in fee simple but the mineral rights to such property are reserved by the grantor, the owner of the real property in fee simple or his heirs or assigns may gain title to such mineral rights by adverse possession if the owner of the mineral rights or his heirs or assigns have neither worked nor attempted to work the mineral rights nor paid any taxes due on them for a period of seven years since the date of the conveyance and for seven years immediately preceding the filing of the petition provided for in subsection (b) of this Code section.

(b) In order to obtain absolute title to mineral rights in the circumstances described in subsection (a) of this Code section:

(1) The owner of the real property in fee simple or his heirs or assigns may file in the superior court for the county where the land is located a petition requesting relief in the nature of declaratory judgment. The petition:

(A) Shall contain all essential, required paragraphs, including jurisdiction;

(B) Shall contain the name and last known address of the grantor of the property reserving the mineral rights and the names and last known addresses of his heirs or assigns or any other person known by the plaintiff to have an interest in the mineral rights;

(C) Shall show:

(i) That the plaintiff or his predecessors in title were granted and obtained a deed for the property in question;

(ii) That the conveyance reserved mineral rights or that the plaintiff or his predecessors in title conveyed the mineral rights and reserved or retained the fee simple title to the real property; and

(iii) That, for a period of seven years preceding the filing of the petition after the conveyance, the owner of the mineral rights or his heirs or assigns have neither worked nor attempted to work the mineral rights nor paid taxes on them; and

(D) Shall include any and all prayers regarding the land that the plaintiff may desire. Specifically, the petition may pray that the court find that the plaintiff has obtained title to the mineral rights through adverse possession and that the plaintiff be granted title to mineral rights;

(2) Upon a finding in the plaintiff's favor, the court shall issue a judgment and decree declaring that the mineral rights involved have been lost and that the plaintiff has gained absolute title to such mineral rights; and

(3) Service shall be perfected in the same manner as service on defendants in an in rem proceeding, including service by publication.

(c) Nothing in this Code section shall restrict the court from granting further plenary relief, whether legal or equitable; and the failure of the petition in the plaintiff's

favor shall not affect the right of the plaintiff to any other relief, legal or equitable, to which he may be entitled.

(d) Any person named in the petition or any person having an interest in the mineral rights shall have the right to intervene in a case brought under this Code section.

(e) In order to maintain the status quo pending the adjudication of the questions or to preserve equitable rights, the court may grant injunctions and other interlocutory extraordinary relief.

(f) Nothing in this Code section shall apply to a lease for a specific number of years nor to an owner of mineral rights who has leased the mineral rights in writing to a licensed mining operator as defined in Part 3 of Article 2 of Chapter 4 of Title 12. (Code 1933, § 85-407.1, enacted by Ga. L. 1975, p. 725, § 1; Ga. L. 1987, p. 3, § 44).

APPENDIX B

Art. 3, § 6, ¶ 2

Paragraph II. Specific powers.

(a) Without limitation of the powers granted under Paragraph 1, the General Assembly shall have the power to provide by law for:

(1) Restrictions upon land use in order to protect and preserve the natural resources, environment, and vital areas of this state.

(2) A militia and for the trial by courts-martial and nonjudicial punishment of its members, the discipline of whom, when not in federal service, shall be in accordance with law and the directives of the Governor acting as commander in chief.

(3) The participation by the state and political subdivisions and instrumentalities of the state in federal programs and the compliance with laws relating thereto, including but not limited to the powers, which may be exercised to the extent and in the manner necessary to effect such participation and compliance, to tax, to expend public money, to condemn property, and to zone property.

(4) The continuity of state and local governments in periods of emergency resulting from disasters caused by enemy attack including but not limited to the suspension of all constitutional legislative rules during such emergency.

(5) The participation by the state with any county, municipality, nonprofit organization, or any combination thereof in the operation of any of the facilities operated by such agencies for

the purpose of encouraging and promoting tourism in this state.

(6) The control and regulation of outdoor advertising devices adjacent to federal aid interstate and primary highways and for the acquisition of property or interest therein for such purposes and may exercise the powers of taxation and provide for the expenditure of public funds in connection therewith.